

11.5A.1 General Provisions

A. Conditional Use Permits Requested in Conjunction with Zoning or Form District Map Amendments

Applicants for Zoning or Form District map amendments may elect, at the time of application, to have the Conditional Use Permit(s) for the same development heard and decided by the Planning Commission. In such cases, the Planning Commission shall assume all powers and duties otherwise exercised by the Board of Adjustments pursuant to KRS 100.231, 100.233, 100.237, 100.241, 100.243, 100.247, and 100.251. For purposes of this section only, the time of application for the map amendment shall correspond to the time of legal notice for the hearing on map amendment.

Hereafter, references to the Board of Zoning Adjustment shall also include the Planning Commission when the Commission is considering Conditional Use Permit(s) or Variances. Determinations on the issuance of Conditional Use Permits shall be made in accordance with the provisions of KRS 100.237

B. Considerations for Review of Conditional Use Permits

In its review of Conditional Use Permit applications, the Board shall include, at a minimum, consideration of the following factors:

1. The purpose and intent and all other requirements of this code.
2. Whether the proposal is consistent with the applicable policies of the Comprehensive Plan.
3. The compatibility of the proposal with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc.
4. Whether necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. will be adequate to serve the proposed use.
5. Any other matter that the Board may deem appropriate and relevant to the specific proposal.

C. Term of Permit Approval

The Permit must be exercised within one year of the date of issuance, or other time frame as may be specified by the Board. However, upon written application, filed at least thirty calendar days prior to said expiration date, the Board may, for cause shown, renew such Conditional Use Permit for one period of up to one year. No less than fourteen (14) calendar days prior to Board consideration of an application for extension, staff of Planning and Design Services shall cause notice of the application to be given to those persons who appeared at the hearing at which the current expiration date was set. If the Permit expires, no new or renewal permit shall be issued except through a new original application in compliance with all requirements for such applications.

D. Requirement to Follow Approved Development Plan

A Conditional Use Permit shall be approved only on the basis of conditions established by the Board to ensure that the proposed conditional use will not adversely affect the use of surrounding properties, and the development plan approved by the Board. The permit shall be valid only for the location and area shown on the approved development plan which shall include a floor plan, if applicable. All construction and operations must be conducted in accordance with the approved development plan and conditions attached to the Conditional Use Permit. The Planning Director is authorized to approve minor development plan modifications consistent with the intent of the approved Conditional Use Permit.

E. Request for Modification

At the initiation of the Planning Director or owner of the property subject to the Conditional Use Permit, any Conditional Use may be reconsidered in accordance with this Part. The Board shall determine the need for a new public hearing. Upon consideration of the request to modify the Conditional Use Permit, the Board may apply additional conditions.

11.5A.2 Pre-Application

Prior to formal application for a Conditional Use Permit, the applicant or applicant's agent shall file a plan and supporting materials with the Planning Director. The materials to be submitted shall be determined by the Planning Director. The Planning Director shall review the materials submitted and provide the applicant with a report addressing, as appropriate, the following issues:

- A. Comprehensive Plan Compliance
- B. Zoning and Form District and Subdivision Regulation impacts
- C. Site characteristics that may have a significant impact on the proposed development

NOTE: Pre-application required but conference is optional.

No formal pre-application conference is required unless specifically requested by the applicant or Planning Director.

11.5A.3 Neighborhood Meeting Requirement

Prior to filing a conditional use permit request and after the pre-application conference (if one was conducted) a letter shall be sent from the developer/owner stating that a pre-application has been filed with PDS and announcing a public meeting held by developer/owner to discuss the proposed project. The letter shall be mailed no less than 10 days prior to the neighborhood meeting. The letter shall be sent to:

- 1st and 2nd tier property owners,
- neighborhood groups who have registered with PDS to receive notice of development actions,
- 2nd through 6th class city if the development is located within such a municipality,
- Metro Council district representative; and
- PDS staff.

On receipt of said letter at the PDS office the pre-application file shall no longer be confidential. The neighborhood meeting shall be held no less than seven (7) days and no more than 90 days prior to the filing of an application. At time of filing a conditional use permit request, the applicant shall provide a summary of a public meeting between the applicant and the parties listed above. The summary shall include a list of those invited, those in attendance and a summary of the issues discussed.

11.5A.4 Application

- A. Applications for Conditional Use Permit shall be submitted on forms supplied by the department. Applications shall be signed by the property owner or his/her agent and filed with Planning and Design Services in accordance with these regulations and the Board of Zoning Adjustment By-Laws and Rules of Procedure. Applications shall be accompanied by supporting material determined appropriate by the Planning Director and by the appropriate fee. The list of required supporting materials shall be available from the offices of Planning and Design Services. Failure to submit all required material may result in delay of the application review. At a minimum, the following materials shall be submitted with all applications for Conditional Use Permit:
 - 1. A "Demonstration of Appropriateness" document which addresses as applicable the items listed in Section 11.5A.1.B above.
 - 2. A development plan of sufficient detail to demonstrate to the Board the character and objectives of the proposed development and the potential impacts of the development on the community and its environs.

11.5A.5 Public Hearing

- A. Hearing Required – The Board shall hold at least one public hearing on each application for a Conditional Use Permit as required by KRS 100. Notice of the hearing shall be given as specified in KRS 100. In addition, staff shall endeavor to assure that notice is given to all neighborhood groups who have registered to receive notice of development applications.
- B. Submission of Materials – In addition to those materials required at the time of application submission, no less than fourteen (14) calendar days prior to an original or continued hearing date before the Board, the applicant shall submit original or revised development plans, studies, reports, etc. which have been prepared in response to comments received during the review process. Failure to submit these items within the required time frame shall be considered grounds for postponing the hearing or deferring action on the proposal. This section does not preclude the applicant from presenting, at the hearing, changes to the plan in response to concerns of the neighbors or Board.
- C. Hearings shall follow the procedures established in the Board's By-Laws and Procedures.
- D. Based on the application, the requirements of this Chapter and the recommendations of the staff and testimony at the hearing, the Board shall prepare findings of fact and issue a denial or an authorization, with or without conditions as it deems necessary to assure that the proposed

conditional use will not adversely affect the use of surrounding properties or unreasonably interfere with the use and enjoyment of such properties.

11.5A.6 Revocation of Conditional Use Permit

The Board shall have the power to revoke Conditional Use Permits for noncompliance with listed requirements or attached conditions. Furthermore, the Board shall have a right of action to compel the removal of offending structures or uses at the cost of the violator and may have judgment in personam for such cost.

11.5B.1 General Provisions

A. Variances requested in Conjunction with Zoning or Form District Map Amendments

Applicants for Subdivisions and Zoning or Form District map amendments may elect, at the time of application, to have the Variance(s) for the same development heard and decided by the Planning Commission. In such cases, the Planning Commission shall assume all powers and duties otherwise exercised by the Board of Adjustments pursuant to KRS 100.231, 100.233, 100.237, 100.241, 100.243, 100.247, and 100.251. For purposes of this section only, the time of application for the map amendment shall correspond to the time of legal notice for the hearing on map amendment.

Hereafter, references to the Board of Zoning Adjustment shall also include the Planning Commission when the Commission is considering Variance(s)

B. Considerations for Variances

Determinations on the granting of Variances(s) shall be made in accordance with KRS 100.241 through 100.251. In its review of Variance applications, the Board shall consider the following factors:

1. The purpose and intent and all other requirements of this code;
2. Whether the requested variance will adversely affect the public health, safety or welfare, will alter the essential character of the general vicinity, will cause a hazard or a nuisance to the public, or will allow an unreasonable circumvention of the requirements of the zoning regulations.
3. Whether the requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
4. Whether the strict application of the provision of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and,
5. Whether the circumstances are the result of action of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning

regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

B. Requirement to follow approved Development Plan

A variance shall be approved only on the basis of the development plan approved by the Board and shall be valid only for the location and area shown on the approved development plan which shall include a floor plan if applicable. All construction and operations must be conducted in accordance with the approved development plan and conditions attached to the Variance. The Director shall specify the contents and format of the development plan. Such specifications shall be available through Planning and Design Services.

11.5B.2 Application

A. Applications for Variance shall be submitted on forms supplied by the department. Applications shall be signed by the property owner or his/her agent and filed Planning and Design Services in accordance with these regulations and the Board of Zoning Adjustment By-Laws and Rules of Procedure. Applications shall be accompanied by supporting material determined appropriate by the Planning Director and by the appropriate fee. The list of required supporting materials shall be available from the offices of Planning and Design Services. Failure to submit all required material may result in delay of the application review. At a minimum, the following materials shall be submitted with all applications for Variance;

1. A "Demonstration of Appropriateness" document which addresses as applicable the items listed in Section 11.5B.1B above. To the extent that the items in 11.5B.1 are adequately addressed on the application, they do not have to be addressed in a separate document.
2. A development plan of sufficient detail to demonstrate to the Board the character and objectives of the proposed development and the potential impacts of the development on the community and its environs.

11.5B.3 Public Hearing

- A. Hearing Determination – The Board shall determine those circumstance under which a public hearing shall be required. Notice of the hearing, if required, shall be given as specified in the By-Laws and Policies of the Board or by State Statute. Notice of the public hearing shall be provided to 1st tier property owners a minimum of 14 days prior to the public hearing. In addition, staff shall endeavor to assure that notice is given to all neighborhood groups who have registered to receive notice of development applications.
- B. Submission of Materials – In addition to those materials required at the time of application submission, no less than fourteen (14) calendar days prior to an original or continued hearing date before the Board, the applicant shall submit original or revised development plans, studies, reports, etc. which have been prepared in response to comments received during the review process. Failure to submit these items within the required time frame shall be considered grounds for postponing the hearing or deferring action on the proposal. The cost for additional notice

shall be borne by the applicant. This section does not preclude the applicant from presenting, at the hearing, changes to the plan in response to concerns of the neighbors or Board.

- C. Hearings shall follow the procedures established in the Board's By-Laws and Procedures.
- D. Based on the application, the requirements of this Chapter; the requirements of KRS 100.241 through 100.251; and the recommendations of the staff and testimony at the hearing, the Board shall prepare findings of fact and issue a denial or an approval, either in whole or in part, with or without conditions.